IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	§	Filed: October 10, 2003
Xiao Zhang	§	
	§	Group Art Unit: 3688
Serial No.: 10/684,125	§	
	§	Examiner: Saba Dagnew
Confirmation No.: 2745	§	

For: CROSS-SELLING IN STANDALONE SALES SYSTEMS

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

CERTIFICATE OF MAILING OR TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, or facsimile transmitted to the U.S. Patent and Trademark Office to fax number 571-273-8300 to the attention of Examiner James W. Myhre, or electronically transmitted via EFS-Web, on the date shown below:

Dec. 22, 2009	/Joseph Jong/
Date	Joseph Jong

REPLY BRIEF

Applicant submits this Reply Brief to the Board of Patent Appeals in response to the Examiner's answer dated November 12, 2009.

While Applicant maintains each of the arguments submitted in Applicant's previously submitted Appeal Brief, Applicant makes the following further arguments in light of the Examiner's Answer.

Applicant's remarks/arguments begin on page 2 of this paper.

ARGUMENTS

The Examiner's Answer largely reiterates the rejections made in the Final Office Action, which been addressed in Applicant's Appeal Brief. This Reply Brief supplements the Appeal Brief to make one additional observation. On page 13 of Applicant's Appeal Brief, Applicant made the following argument regarding independent Claims 1 and 9:

> In this case, *Henson* does not disclose "each and every element as set forth in the claim". For example, *Henson* does not disclose a computer-implemented method of cross-selling products based on a system for sale to a customer that includes *presenting the one or more cross-sell products to the user, wherein each of the one or more cross-sell products presented to the user is offered at a discount based on the state of the system, and wherein each of the one or more cross-sell products presented to the user is determined to be compatible with the state of the system*, as recited in claim 1. Claim 9 includes a similar limitation. Regarding this limitation,...the Examiner is arguing that a selection box for "McAfee VirusScan 3.1" shown in Figure 3A of *Henson* teaches the recited limitation.
>
> Applicant points out that the selection box cited by the Examiner is not labeled in Figure 3A, and is not in any way discussed or explained in the text of *Henson*. Thus, there is no indication that the McAfee software is being offered "at a discount based on the state of the system," as assumed by the Examiner. Therefore, the Examiner appears to argue that the mere appearance of the phrase "at no additional charge" in Figure 3A of *Henson* inherently teaches the recited limitation.
>
> Applicant respectfully submits that the Examiner's analysis is flawed, since *Henson* does not inherently teach the recited limitation. That is, the limitation that *each of the one or more cross-sell products presented to the user is offered at a discount based on the state of the system* is not necessarily present in Figure 3A of *Henson*. For example, since *Henson* is entirely silent on how the pricing of the software mentioned in Figure 3A is determined, we may just as easily assume that such software is always free regardless of the vendor (i.e., "freeware"), or that such software is included for free with all computer orders, without regard for the state of any included systems. Since such software would not be *offered at a discount based on the state of the system*, Applicant submits that *Henson* does not inherently teach the recited limitation.

On page 11 of the Examiner's Answer, the Examiner provides the following response:

> The Examiner answers that the Appellant's specification page 10 paragraph [0039] lines 13-15 indicates that "in any case, the cross-sell products may be offered at a discount price (or be entirely free), but only when purchased along with another specific product" [sic]. Therefore, the Appellant's "discount" means simply "an entirely free" [sic].

Thus, the Examiner mistakenly equates a discount price with being entirely free. This conclusion is untenable for at least two reasons. First, it is self-evident that a *free* item has no price at all - that is the definition of being free. Second, the Examiner mischaracterizes the Applicant's definition of "discount price". The section of Applicant's specifications cited to by Examiner is expressed in the ***disjunctive***, i.e., "may be offered at a discount price (***or*** be entirely free)" (emphasis added). In other words, the very definitional language on which the Examiner seeks to rely undermines the Examiner's position in that it specifically distinguishes between a discount price and a free item. Since the rejection is premised on a flawed definition of "discount price", the rejection is defective and should be reversed.

Therefore, the claims are believed to be allowable, and allowance of the claims is respectfully requested.

CONCLUSION

The Examiner errs in finding that:

1. Claims 1-15 and 33-36 are anticipated by *Henson*; and
2. Claims 37-43 are unpatentable over *Henson.*

Withdrawal of the rejections and allowance of all claims is respectfully requested.

Respectfully submitted, and
S-signed pursuant to 37 CFR 1.4,

/Gero G. MCCLELLAN, Reg. #44,227/

Gero G. McClellan
Registration No. 44,227
Patterson & Sheridan, L.L.P.
3040 Post Oak Blvd., Suite 1500
Houston, TX 77056
Telephone: (713) 623-4844
Facsimile: (713) 623-4846
Attorney for Appellant(s)